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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Mar 30, 2023

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MELINDA E.,

Plaintiff,

v.

KILOLO KIJAKAZI,
ACTING COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

No. 2:21-CV-344-JAG

ORDER GRANTING
DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT

BEFORE THE COURT are cross-motions for summary judgment.

ECF Nos. 14, 15. Attorney Dana Madsen represents Melinda E. (Plaintiff); Special Assistant United States Attorney Frederick Fripps represents the Commissioner of Social Security (Defendant). After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS** Defendant's Motion for Summary Judgment and **DENIES** Plaintiff's Motion for Summary Judgment.

I. JURISDICTION

Plaintiff filed applications for on April 4, 2019, alleging disability beginning December 22, 2014.¹ The applications were denied initially and upon reconsideration. Administrative Law Judge (ALJ) Stallings held a hearing on

¹ Plaintiff later amended her alleged onset date to July 4, 2018. Tr. 18.

1 February 2, 2021 and issued an unfavorable decision on February 22, 2021.
2 Tr. 15-29. The Appeals Council denied review on October 19, 2021. Tr. 1-6.
3 Plaintiff appealed this final decision of the Commissioner on December 11, 2021.
4 ECF No. 1.

5 II. STANDARD OF REVIEW

6 The ALJ is responsible for determining credibility, resolving conflicts in
7 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,
8 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with
9 deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*,
10 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed
11 only if it is not supported by substantial evidence or if it is based on legal error.
12 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is
13 defined as being more than a mere scintilla, but less than a preponderance. *Id.* at
14 1098.

15 Put another way, substantial evidence is such relevant evidence as a
16 reasonable mind might accept as adequate to support a conclusion. *Richardson v.*
17 *Perales*, 402 U.S. 389, 401 (1971) (quoting *Consolidated Edison Co. v. NLRB*, 305
18 U.S. 197, 229 (1938)). If the evidence is susceptible to more than one rational
19 interpretation, the Court may not substitute its judgment for that of the ALJ.
20 *Tackett*, 180 F.3d at 1098; *Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d 595,
21 599 (9th Cir. 1999). If substantial evidence supports the administrative findings, or
22 if conflicting evidence supports a finding of either disability or non-disability, the
23 ALJ's determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-30
24 (9th Cir. 1987). Nevertheless, a decision supported by substantial evidence will be
25 set aside if the proper legal standards were not applied in weighing the evidence
26 and making the decision. *Brawner v. Sec'y of Health and Human Services*, 839
27 F.2d 432, 433 (9th Cir. 1988).

1 III. SEQUENTIAL EVALUATION PROCESS

2 The Commissioner has established a five-step sequential evaluation process
3 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a),
4 416.920(a); *Bowen v. Yuckert*, 482 U.S. 137, 140-42 (1987). In steps one through
5 four, the claimant bears the burden of establishing a *prima facie* case of disability.
6 *Tackett*, 180 F.3d at 1098-99. This burden is met once a claimant establishes that a
7 physical or mental impairment prevents the claimant from engaging in past
8 relevant work. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4). If a claimant cannot
9 perform past relevant work, the ALJ proceeds to step five, and the burden shifts to
10 the Commissioner to show: (1) the claimant can make an adjustment to other work;
11 and (2) the claimant can perform other work that exists in significant numbers in
12 the national economy. *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012). If a
13 claimant cannot make an adjustment to other work in the national economy, the
14 claimant will be found disabled. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v).

15 IV. ADMINISTRATIVE FINDINGS

16 On February 22, 2021, the ALJ issued a decision finding Plaintiff was not
17 disabled as defined in the Social Security Act.

18 At *step one*, the ALJ found Plaintiff had not engaged in substantial gainful
19 activity since July 4, 2018, the amended alleged onset date. Tr. 18.

20 At *step two*, the ALJ determined that Plaintiff had the following severe
21 impairments: polyarticular psoriatic arthritis; osteoarthritis of the right knee;
22 bursitis of the hips; hammertoes, status post surgery; visual acuity disturbance with
23 cataracts; Raynaud's disease; peripheral vascular disease with claudication;
24 degenerative disc disease of the cervical and lumbar spine; bilateral rotator cuff
25 syndrome. Tr. 18.

26 At *step three*, the ALJ found these impairments did not meet or equal the
27 requirements of a listed impairment. Tr. 19.

1 The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and
2 determined Plaintiff could perform light work, subject to a series of additional
3 limitations:

4 She can sit for up to two hours at a time for a total of approximately
5 seven hours in an eight-hour workday. She can stand for up to one hour
6 at a time for a total of approximately three hours in an eight-hour
7 workday. She can walk for up to 15 minutes at a time for no more than
8 two hours in an eight-hour workday. Her ability to push and pull is
9 limited to frequent rather than constant. She can never climb ladders,
10 ropes, or scaffolds, but can occasionally climb ramps and stairs,
11 balance, stoop, kneel, crouch, and crawl. She can occasionally reach
12 overhead bilaterally. Reaching in all other directions is limited to
13 frequent rather than constant. She will need to avoid concentrated
14 exposure to extreme cold and all exposure to excessive vibration,
15 unprotected heights, hazardous machinery, and operational control of
16 moving machinery. She will need to avoid jobs that require depth
17 perception for the completion of tasks.

18 Tr. 20.

19 At *step four*, the ALJ found Plaintiff was unable to perform past relevant
20 work. Tr. 27.

21 At *step five*, the ALJ found there are jobs that exist in significant numbers in
22 the national economy that Plaintiff can perform. Tr. 27.

23 The ALJ thus concluded Plaintiff was not disabled from July 4, 2018,
24 through the date of the decision. Tr. 28.

25 V. ISSUE

26 The question presented is whether substantial evidence supports the ALJ's
27 decision denying benefits and, if so, whether that decision is based on proper legal
28 standards. Plaintiff raises one issue for review: whether the ALJ erred by
discounting her subjective complaints. ECF No. 14 at 19-20.

VI. DISCUSSION

Plaintiff contends the ALJ erred by not properly assessing her symptom complaints. ECF No. 14 at 19-20. Where, as here, the ALJ determines a claimant has presented objective medical evidence establishing underlying impairments that could cause the symptoms alleged, and there is no affirmative evidence of malingering, the ALJ can only discount the claimant’s testimony as to symptom severity by providing “specific, clear, and convincing” reasons supported by substantial evidence. *Trevizo v. Berryhill*, 871 F.3d 664, 678 (9th Cir. 2017).

The ALJ indicated Plaintiff alleged “she is unable to sustain basic work activities on a regular and continuing basis because of her impairments, specifically osteoarthritis, psoriatic arthritis, Raynaud’s, fibromyalgia, and blindness in the right eye.” Tr. 20.

The ALJ discounted Plaintiff's testimony as: (1) inconsistent with the medical evidence; and (2) inconsistent with her activities. Tr. 21-24. These reasons are clear and convincing, *see Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161 (9th Cir. 2008) (citing *Johnson v. Shalala*, 60 F.3d 1428, 1434 (9th Cir. 1995)); *Lingenfelter v. Astrue*, 504 F.3d 1028, 1040 (9th Cir. 2007), and no error is apparent to the Court.² As discussed below, Plaintiff fails to show the ALJ's findings were unsupported.

In challenging the ALJ's treatment of her testimony, Plaintiff argues in cursory fashion that "the ALJ has based the Unfavorable Decision upon normal findings on examination and ignored the objective findings. The ALJ also based

² See Tr. 21-24 (reasonably contrasting the medical evidence with Plaintiff's allegations); Tr. 24 (evaluating the record and testimony and reasonably concluding Plaintiff acted as her partner's "primary caregiver," in contrast to Plaintiff's claims in her function report).

1 the Unfavorable Decision upon the opinion of nonexamining, nontreating doctors
2 of the Disability Determination Services who allegedly reviewed [Plaintiff's]
3 records. This finding ignores the numerous objective records which would fully
4 corroborate [Plaintiff's] testimony.” ECF No. 14 at 20 (internal citations omitted).

5 Plaintiff bears the burden of showing the ALJ harmfully erred. *See Ludwig*
6 *v. Astrue*, 681 F.3d 1047, 1054 (9th Cir. 2012) (holding that the party challenging
7 an administrative decision bears the burden of proving harmful error) (citing
8 *Shinseki v. Sanders*, 556 U.S. 396, 407-09 (2009)). Here, Plaintiff's argument is a
9 conclusory statement that the ALJ erred, made without elaboration, explanation, or
10 citation to supportive evidence. Plaintiff neither identifies what subjective
11 complaints were improperly discounted nor addresses the grounds on which the
12 ALJ discounted her subjective complaints. Plaintiff thus falls far short of meeting
13 her burden to show the ALJ harmfully erred. *See Indep. Towers of Washington v.*
14 *Washington*, 350 F.3d 925, 929 (9th Cir. 2003) (“Our adversarial system relies on
15 the advocates to inform the discussion and raise the issues to the court. ... We
16 require contentions to be accompanied by reasons.”); *Carmickle*, 533 F.3d at 1161
17 n.2 (declining to address issues not argued with any specificity); *Gonzalez-*
18 *Hernandez v. Colvin*, 2014 WL 4685234, at *5 (E.D. Wash. Sept. 19, 2014) (“At
19 base, Plaintiff contends she is disabled. The ALJ recounted Plaintiff's activities of
20 daily living, the objective medical evidence, and reconciled the competing
21 opinions and evidence as he was obligated. No harmful error has been briefed or
22 shown. Because Plaintiff's arguments have not been raised with any more
23 particularity, the Court will decline to address anything further.”) (internal citations
24 omitted); *id.* (“It is not enough merely to present an argument in the skimpiest way,
25 and leave the Court to do counsel's work - framing the argument and putting flesh
26 on its bones through a discussion of the applicable law and facts.”) (quoting *Rogal*
27 *v. Astrue*, 2012 WL 7141260, at *3 (W.D. Wash. Dec. 7, 2012), *report and*

1 recommendation adopted, 2013 WL 557172 (W.D. Wash. Feb 12, 2013), aff'd sub
2 nom. *Rogal v. Colvin*, 590 F. App'x 667 (9th Cir. 2014)).

3 The Court accordingly rejects Plaintiff's conclusory argument and, on its
4 own review of the record, declines to disturb the ALJ's findings.

5 **VII. CONCLUSION**

6 Having reviewed the record and the ALJ's findings, the Court finds the
7 ALJ's decision is supported by substantial evidence and free of error.

8 Therefore, **IT IS HEREBY ORDERED:**

9 1. Plaintiff's Motion for Summary Judgment, **ECF No. 14**, is
10 **DENIED**.

11 2. Defendant's Motion for Summary Judgment, **ECF No. 15**, is
12 **GRANTED**.

13 3. The District Court Executive is directed to file this Order and provide
14 a copy to counsel for Plaintiff and Defendant. Judgment shall be entered for
15 Defendant and the file shall be **CLOSED**.

16 **IT IS SO ORDERED.**

17 DATED March 30, 2023.



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20 JAMES A. GOEKE
21 UNITED STATES MAGISTRATE JUDGE
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